

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TARA MAPES,

Plaintiff,

vs.

No. 4:22-cv-00110-JMS-DML

TOP TIER MARKETERS LLC D/B/A ARTFILY,
MEAGAN BROADWATER, and DEAN
BROADWATER,

Defendants.

ORDER

Ms. Mapes initiated this litigation under the Copyright Act, [17 U.S.C. § 101](#), *et seq.*, related to the infringement of her copyright "Santa with Magic Snow Globe," Copyright Registration Number VA2-151-851, by Defendants Top Tier Marketers LLC d/b/a Artfily, Meagan Broadwater, and Dean Broadwater. Presently pending before the Court is a Motion for Default Judgment filed by Ms. Mapes in which she asks the Court to enter default judgment against Defendants, including certain declaratory and injunctive relief, an order requiring Defendants to remove certain images and products from Defendants' websites or promotional materials, statutory damages of \$150,000 pursuant to [17 U.S.C. § 504](#), statutory damages of \$175,000 pursuant to [17 U.S.C. § 1203](#), pre-judgment and post-judgment interest, and reasonable attorneys' fees pursuant to [17 U.S.C. § 505](#). [[Filing No. 17.](#)]

The Clerk entered default against Defendants pursuant to [Federal Rule of Civil Procedure 55\(a\)](#) on August 29, 2022. [[Filing No. 14.](#)] Because Defendants have not answered or otherwise pled in response to the Complaint, the Court must accept the Complaint's allegations as true. Given those allegations and Ms. Mapes' Motion for Default Judgment and supporting evidence,

the Court finds a hearing is unnecessary, and now **GRANTS IN PART** and **DENIES IN PART** the pending Motion, [17].

The Court **DENIES IN PART** the Motion, [17], to the extent that Ms. Mapes requests an award of statutory damages of \$175,000 pursuant to [17 U.S.C. § 1203](#). Ms. Mapes does not request that relief in her Complaint, [*see* [Filing No. 1](#)], and the Court may not award relief on default that was not requested in the Complaint. [Fed. R. Civ. P. 54\(c\)](#) ("A default judgment must not differ in kind from, or exceed in amount, what is demanded in the pleadings").

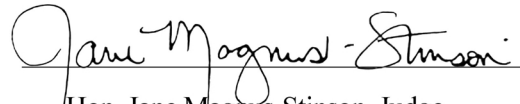
The Court **GRANTS IN PART** the Motion, [17], to the extent that it enters **DEFAULT JUDGMENT** pursuant to [Federal Rule of Civil Procedure 55\(b\)](#) in favor of Ms. Mapes and against Defendants as follows:

- The Court **FINDS** that Defendants have infringed Ms. Mapes' copyright "Santa with Magic Snow Globe";
- The Court **PERMANENTLY ENJOINS** and restrains Defendants from manufacturing, distributing, licensing, using, copying, reproducing, displaying, adapting, offering for sale, and/or selling any product (including, but not limited to, digital downloads) that infringes Ms. Mapes' copyright "Santa with Magic Snow Globe";
- The Court **PERMANENTLY ENJOINS** and restrains Defendants from engaging in any act of copyright infringement of Ms. Mapes' copyright "Santa with Magic Snow Globe";
- The Court **ORDERS** Defendants to remove any copyright images or products using such images from all of Defendants' products, as well as from any websites or promotional materials, whether electronic, printed or otherwise, under Defendants' direct or indirect dominion and control, and **ORDERS** Defendants to destroy all copies thereof under [17 U.S.C. § 503](#);
- The Court **AWARDS** statutory damages of **\$150,000** pursuant to [17 U.S.C. § 504](#);
- The Court **AWARDS** pre-judgment and post-judgment interest; and

- The Court **AWARDS** reasonable attorneys' fees and costs pursuant to [17 U.S.C. § 505](#). Ms. Mapes must file a fee petition by **November 18, 2022** with supporting documentation.

Once the issue of attorneys' fees and costs is resolved, or if no fee petition is filed, final judgment will issue accordingly.

Date: 10/24/2022



Hon. Jane Magnus-Stinson, Judge
United States District Court
Southern District of Indiana

Distribution via ECF only to all counsel of record

Distribution via United States Mail to:

Top Tier Marketers LLC d/b/a Artfily
c/o Dean Broadwater, Registered Agent
921 Strangler Fig Lane
Sanibel, FL 33967

Meagan Broadwater
921 Strangler Fig Lane
Sanibel, FL 33967

Dean Broadwater
921 Strangler Fig Lane
Sanibel, FL 33967